

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.  
 . 4:17-CR-053-A-1  
V. .  
 . Fort Worth, Texas  
JOSE RAMIREZ . August 11, 2017  
 . . . . .

TRANSCRIPT OF PROCEEDINGS  
(Sentencing Hearing)  
BEFORE THE HONORABLE JOHN MCBRYDE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: MR. BRIAN POE  
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For the Defendant: MR. MICHAEL A. LEHMANN  
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Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

**P R O C E E D I N G S**

(Commencing, 9:25 a.m.)

THE COURT: Okay. I'm now calling for sentencing Number 4:17-CR-053-A. It's United States of America versus Jose Ramirez. Mr. Poe is here for the government, and Mr. Lehmann is here for the defendant.

And I'll have the defendant state his full name for the record.

DEFENDANT RAMIREZ: Jose R. Ramirez.

THE COURT: You appeared before me --

DEFENDANT RAMIREZ: Yes, sir.

THE COURT: Let me get the exact date.

On April 28, 2017, you appeared before me with Mr. Lehmann, and you pleaded guilty to the offense charged by the one count superseding information in this case, and that was the offense of possession with intent to distribute a controlled substance. Of course, we're here today for sentencing based on the conviction that resulted from that plea of guilty.

Mr. Lehmann, did you and your client receive in a timely manner the presentence report and the addendum to it?

MR. LEHMANN: Yes, Your Honor.

THE COURT: Did both of you read those items and then discuss them with each other?

MR. LEHMANN: Yes, Your Honor.

1 THE COURT: Okay. Let's see. There were some  
2 objections to the presentence report. I tentatively concluded  
3 they were without merit, and I indicated that in an order I  
4 signed August 4.

5 Do you still want to pursue any of those objections?

6 MR. LEHMANN: Your Honor, we have no evidence to  
7 offer to the Court at this time. We would rest on the  
8 pleadings as they read and simply prepare for argument.

9 THE COURT: Okay. Well, I'll overrule Objection  
10 Number 1 that has to do with an enhancement under Section  
11 2B1.1(b)(12). The objection is to Paragraphs 23 and 30. I'm  
12 satisfied that the probation officer correctly concluded that  
13 the increase was appropriate under the facts of this case. So  
14 I adopt the findings and conclusions of the probation officer  
15 on that subject.

16 Let's see. The next objection is to Paragraphs 39 and 40  
17 of the presentence report. As I read the objection, it's  
18 saying the Court should not take into account the information  
19 provided in those paragraphs in sentencing because it does not  
20 constitute offense conduct or relevant conduct.

21 I don't believe that conduct was taken into account in  
22 determining what the sentencing guideline ranges are.

23 MR. LEHMANN: That's correct, Your Honor.

24 THE COURT: But it's something that the Court  
25 certainly can and should consider in determining what sentence

1 to impose. So I overrule that objection.

2 Let's see. Objection Number 3, that has to do with the  
3 suggestion by the probation officer that a sentence above the  
4 top of the guideline range would be appropriate in this case  
5 if the Court were to conclude that it should be -- that such a  
6 sentence should be imposed.

7 I overrule that objection because I tentatively concluded  
8 that there should be a sentence above the top of the advisory  
9 guideline range, but I'm going to hear from the defendant and  
10 Mr. Lehmann on that subject.

11 I believe that takes care of all the objections, doesn't  
12 it, Mr. Lehmann?

13 MR. LEHMANN: It does, Your Honor.

14 THE COURT: There being no further objections to the  
15 presentence report, the Court adopts as the fact findings of  
16 the Court the facts set forth in the presentence report as  
17 modified or supplemented by the addendum, and the Court adopts  
18 as its conclusions of the Court the conclusions expressed in  
19 the presentence report as modified or supplemented by the  
20 addendum.

21 Now, in both instances, the issue of whether there should  
22 be a sentence above the top of the guideline range is still an  
23 open issue, and I'm going to hear from defendant's counsel and  
24 the defendant on that subject.

25 The Court concludes that the Total Offense Level is 35.

1 That the Criminal History Category is I. That the  
2 imprisonment range is 168 to 210 months. That the supervised  
3 release range is three years. That the fine range is \$40,000  
4 to \$1 million, and that a special assessment of \$100 is  
5 mandatory.

6 Okay. Mr. Lehmann, you can make whatever statement you  
7 would like to make on behalf of your client at this time --  
8 well, first of all, do you have any evidence that you want to  
9 offer on the subject of a possible sentence above the top of  
10 the guideline range?

11 MR. LEHMANN: No evidence, Your Honor, just  
12 argument.

13 THE COURT: Okay. Go ahead and make whatever  
14 statement you want to make on behalf of your client at this  
15 time and include anything you want to say about the  
16 possibility of an upward variance.

17 MR. LEHMANN: Thank you.

18 Your Honor, this case warrants a substantial downward  
19 variance. Mr. Ramirez is 52 years old and has zero criminal  
20 history points. As the sentencing commission has stated,  
21 recidivism rates are most closely correlated with total  
22 criminal history points. So people like Mr. Ramirez pose the  
23 least risk of recidivating when compared to any other type of  
24 offender.

25 For all the reasons laid out in the sentencing memo,

1 doubts have been cast on the efficacy of the methamphetamine  
2 guidelines, and Courts are routinely granting downward  
3 variances acknowledging these deficiencies. Higher purity  
4 does not equal higher culpability, and the treatment between  
5 the intoxicant and non-intoxicant parts that are included in  
6 the labs don't distinguish the difference. It is all punished  
7 under 2D1.1.

8 The PSR and the Court's tentative order cite the  
9 possibility of an upward departure. If we stretched our  
10 imaginations to believe that a violation of 922(g) could have  
11 occurred here, we can play that out logically and realize that  
12 the guidelines would take into account the same offense  
13 conduct. It would invoke the cross reference to the drugs,  
14 and then the result would be exactly the same with no enhanced  
15 penalty, and that's just playing devil's advocate because the  
16 facts are simply insufficient to support a violation of  
17 922(g).

18 What little evidence does exist about Mr. Ramirez's prior  
19 drug use was gleaned in the PSR interview, not as an  
20 investigation by law enforcement in this case. I question the  
21 bait and switch policy of offering drug rehabilitation  
22 programs just to punish people in need for the candor that  
23 they give our probation department.

24 Most importantly, however, is that Mr. Ramirez is a good  
25 man as evidenced by all of the people, all of the families

1 here today in the gallery, if they could stand up and please  
2 be recognized.

3 THE COURT: Okay. Thank you for being here. You can  
4 be seated.

5 MR. LEHMANN: These are members of his family and his  
6 extended family that have come to lend their support to him.  
7 He has spent his life making an honest living, an honest  
8 paycheck, as an oil refinery worker and as a plumber. As a  
9 young man, he was a two-time Golden Glove boxing champion, all  
10 without a tenth finger.

11 He is the proud father of four successful children, who  
12 now as young adults, ages 21 through 32, have their own lives.  
13 He has helped his daughter battle cancer. He's helped one of  
14 his sons win a Golden Glove himself.

15 Four years ago Mr. Ramirez started breaking down. He had  
16 hip replacement surgery. He needs a second surgery for a  
17 hernia, and he is disabled. He is infirmed.

18 Your Honor, Mr. Ramirez has spent the majority of his life  
19 doing the right thing. For these reasons, we urge the Court  
20 to consider a downward variance in this case.

21 And we would like to call three character witnesses to  
22 address the Court.

23 THE COURT: You mean somebody to speak from the  
24 podium?

25 MR. LEHMANN: Correct, Your Honor.

1 THE COURT: That's fine. You can.

2 MR. LEHMANN: Thank you, Your Honor.

3 THE COURT: Have them all three come up at the same  
4 time.

5 You pick the sequence in which you want them to speak.

6 MR. LEHMANN: Your Honor, it doesn't matter to me.

7 THE COURT: Let's have the young lady come up first.  
8 Why don't you say what your name is and what city you live  
9 in.

10 MS. RAMIREZ: My name is -- (unintelligible) Ramirez,  
11 and I live in Corpus Christi, Texas.

12 THE COURT: Okay. Make whatever statement you would  
13 like to make on behalf of the defendant.

14 MS. RAMIREZ: I'm not up here to beg that there not  
15 be justice. I understand the severity of the charges my dad  
16 is being charged with. I understand that there needs to be  
17 justice, and I agree that there needs to be justice, but what  
18 I'm asking for, Judge, is -- praying for is -- I'm praying for  
19 a lesser sentence so he can see his grandson grow up. I'm  
20 asking that there be room for restoration and reconciliation  
21 in our lives, not only while he's in prison but outside of  
22 prison.

23 I pray that there would be room for me to have a real  
24 relationship with my father outside of prison. I understand  
25 that we've had years to develop that, but we've come short.



1 We've fallen short, but I believe that there is a God who can  
2 come and bring restoration and reconciliation in our lives,  
3 and I believe that, despite the sentence, that whether or not  
4 he gets grace here in this courtroom today on his sentence,  
5 that God alone will give him grace and mercy in whatever  
6 situation he's been placed in. And I know that there is no  
7 pick so deep that God can't reach. So I am praying that you  
8 would partner with God and leave room for grace and  
9 restoration in our lives.

10 THE COURT: Okay. Thank you.

11 MS. RAMIREZ: Thank you.

12 THE COURT: The one on my right, why don't you come  
13 up now and say what your name is and what city you live in.

14 MR. J. RAMIREZ: My name is Jonathan Ramirez. I live  
15 in Corpus Christi, Texas.

16 THE COURT: Okay. Make whatever statement you would  
17 like to make.

18 MR. J. RAMIREZ: I'm the youngest of -- his youngest  
19 son. Like my sister just said, I just pray for grace over his  
20 sentencing. Now, I still think of my dad as Superman. He has  
21 always stayed tough and strong and helped me through a lot of  
22 my own battles. I know he can pull through this like he's  
23 pulled through a lot of struggles in his life. It's good to  
24 see him here today.

25 But, yeah, I just, you know, pray for grace over his

1 sentence and him. I know when this is all over that he will  
2 come out stronger and better. That's it.

3 THE COURT: Okay. Thank you.

4 Okay. Why don't you come forward and say what your name  
5 is and what city you live?

6 MR. A. RAMIREZ: My name is Apolinar Ramirez, and I  
7 live in the Colony, Texas. I'm Joe's oldest brother.

8 THE COURT: Okay.

9 MR. A. RAMIREZ: I just want to say a couple things  
10 about him.

11 Joe might not look like a very good person, but he is a  
12 good person. He has a good heart. He's been a good father, I  
13 believe a good father, good son, good brother and good  
14 neighbor. I just want -- I'm just hoping that you will be  
15 lenient with him because I do not want him to die in prison.

16 THE COURT: Okay. Thank you.

17 MR. A. RAMIREZ: Thank you.

18 THE COURT: Okay. Why don't you and your client come  
19 back to the podium.

20 MR. LEHMANN: Now, Mr. Ramirez would like to address  
21 the Court, Your Honor.

22 THE COURT: Mr. Ramirez, you have the right to make  
23 any statement or presentation you would like to make on the  
24 subject mitigation, that is, the things you think the Court  
25 should take into account on the subject of sentencing more

1 generally, and I'll invite you at this time to do that.

2 DEFENDANT RAMIREZ: First of all, I want to thank my  
3 family and friends and tell them I love them all.

4 I done a mistake. We all do them. That would be it.

5 THE COURT: Is that it?

6 DEFENDANT RAMIREZ: Yes, sir.

7 THE COURT: Okay. Well, you have a disturbing  
8 history in that you had in your possession at the time of -- I  
9 think they found it at the time of your arrest, at least -- I  
10 believe that's when they found the firearms, and you admitted  
11 that they were yours. It was a .40 caliber pistol that had  
12 been stolen and other weapons. It was unlawful for you to  
13 possess those weapons because you were addicted to and used --  
14 at least you used controlled substances.

15 Fortunately, for you your criminal record is not as bad as  
16 I often encounter. My tentative conclusion was that you get a  
17 sentence above the top of the advisory guideline range, but  
18 your attorney has been very persuasive. So I've changed my  
19 mind on that. As a matter of fact, I've decided I'm going to  
20 go about midway between the bottom and top of your advisory  
21 guideline imprisonment range.

22 The range is 168 to 210 months. Actually, I'm going to go  
23 a little bit below the mid-range. I'm going to give you a  
24 sentence of imprisonment of 180 months, and that will be  
25 combined with a term of supervised release of three years, and

1 that will start, of course, when you've completed your  
2 sentence of imprisonment, and you will be obligated to pay a  
3 special assessment of \$100. That's payable at the time of  
4 sentencing.

5 I've concluded that a sentence of the kind I've just  
6 described is one that will adequately and appropriately  
7 address all the factors the Court should consider at  
8 sentencing under 18, United States Code, Section 3553(a). So  
9 that's the sentence I'm going to impose.

10 The Court orders and adjudges that the defendant be  
11 committed to the custody of the Bureau of Prisons to serve a  
12 term of imprisonment of 180 months. I'm also ordering that  
13 the defendant serve a term of supervised release of three  
14 years to start once he's completed his sentence of  
15 imprisonment.

16 Now, the conditions of that supervised release will be the  
17 standard conditions that will be set forth in the judgment of  
18 conviction and sentence and the following additional  
19 conditions:

20 The defendant shall not commit another federal, state, or  
21 local crime. The defendant shall not unlawfully possess a  
22 controlled substance. The defendant shall cooperate in the  
23 collection of DNA as directed by the probation officer and as  
24 authorized by the Justice for All Act of 2014 -- or 2004. I'm  
25 sorry.

1           The defendant shall refrain from any unlawful use of a  
2           controlled substance and shall submit to one drug test within  
3           15 days of release from imprisonment and at least two periodic  
4           drug tests thereafter as directed by the probation officer  
5           pursuant to the mandatory drug testing provision of the 1994  
6           Crime Bill.

7           The defendant shall participate in a program approved by  
8           the probation officer for the treatment of narcotic or drug or  
9           alcohol dependency. That will include testing for the  
10          detection of substance use, and he shall abstain from the use  
11          of alcohol and all other intoxicants during and after  
12          completion of that treatment and contribute to the costs of  
13          those services at the rate of at least \$25 a month.

14          I'm also ordering that the defendant pay a special  
15          assessment of \$100. That's payable immediately to the United  
16          States of America through the Office of the Clerk of the Court  
17          here in Fort Worth.

18          Mr. Ramirez, you have the right to appeal from the  
19          sentence I've imposed if you're dissatisfied with it. That  
20          appeal would be to the United States Court of Appeals for the  
21          Fifth Circuit. You have the right to appeal in forma  
22          pauperis. That means without any cost to you if you qualify  
23          for it. Presumably, you would.

24          You would have the right to have the clerk of the Court  
25          file a notice of appeal for you, and the clerk will do that

1       forthwith if you were to specifically request it.

2           You and your attorney have been given a form that outlines  
3       certain rights and obligations in reference to an appeal.  If  
4       you haven't already done so, I want the two of you to review  
5       it.  Be sure you understand it, and once both of you are  
6       satisfied you understand it, I want both of you to sign it and  
7       return it to the Court coordinator.

8           Has that been done, Mr. Lehmann?

9           MR. LEHMANN:  It has, Your Honor.

10          THE COURT:  Okay.  The defendant is remanded to  
11       custody.

12          Don't we have an indictment still pending, Mr. Poe, that  
13       needs to be dealt with?

14          MR. POE:  Yes, Your Honor.  We would ask -- we move  
15       to dismiss the pending indictments.

16          THE COURT:  Is he the only defendant named in the  
17       indictment?

18          MR. POE:  Yes, Your Honor.

19          THE COURT:  Okay.  Well, I'll order the indictment  
20       dismissed pursuant to the government's motion.

21          Okay.  The defendant's remanded to custody, and you're  
22       excused, Mr. Lehmann.

23          MR. LEHMANN:  Thank you, Your Honor.

24          (End of proceedings, 9:45 a.m.)

25                               -oOo-

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, and that the transcript was prepared by me and under my supervision.

s/ Ana P. Warren  
Ana P. Warren, CSR #2302  
U.S. District Court Reporter

October 25, 2017  
Date

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